IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

C.O.C.P. No. 1131 of 2003 (O&M).
Date of Decision: August 08, 2006.

M/s Dixon Utilities and Export Ltd.

....**Petitioner**

through
Mr. A.C.Jain, Advocate

Versus

Mr. H.B.Garg, Executive Officer

...**Respondent**
through
Mr. T.S.Gujral, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

The petitioner filed CWP No.7760 of 2002 seeking a direction to the respondents including the Municipal Council, SAS Nagar, Mohali to charge 50% of the octroi as per the industrial policy of the State.

The aforesaid writ petition was disposed of on 9th May, 2003 in view of the statement made on behalf of the respondents, in terms whereof a direction was issued to the Municipality to grant 50% exemption in the matter of payment of octroi on the goods specified in notification dated 22nd January, 1999. The Division Bench further directed that "if the petitioner has paid octroi in excess of what is payable in terms of the notification dated January 22, 1999, then the same shall be refunded to it by respondent

No.3 within a period of three months from today".

Alleging that despite several communications including contempt notice served upon respondent No.3-Municipality, the excess amount of octroi paid by the petitioner was not being refunded, this petition has been filed.

In response to the show cause notice, firstly, the Municipality came up with the stand that a review application has been filed in this Court against the aforesaid order. It is not disputed that no interim stay was granted in the said review application and the same has since been dismissed on 18.4.2006.

Meanwhile, in reply to an affidavit filed on behalf of the petitioner, the Executive Officer of the Municipality has also filed reply-cum-affidavit dated 12.12.2005. It is pertinent to mention here that in Para No.5 of the afore-stated reply/affidavit, the following stand has been taken:-

> "5. That in further compliance of directions, a cheque for a sum of Rs.11,80,547/- was prepared for payment to the petitioner, subject to the decision of the review and writ petition but the Audit Department of Local Self Government, Punjab, put an objection on 31.3.2004 questioning this amount. According to the Audit Department, the amount as calculated by the petitioner is excessive to the tune of Rs.1,15,707/-. Consequently, the cheque had to be cancelled and a fresh cheque was prepared for a sum of Rs.10,64,840/-. On coming to know of the audit objection a letter dated 31.3.2004 was sent to the petitioner asking him to contact the officials of Municipal Council, Mohali immediately within 24 hours along with the

original receipts, so that entries could be verified and audit objection could be removed, if possible. This letter was received by the petitioner on 1.4.2004. But the petitioner did not bother to contact the officials till the date affidavit was filed on May 4,2004. Thereafter, an application was filed in the Hon'ble Court seeking directions to the petitioner to co-operate and collect refund subject to the outcome of review petition and writ".

In this very affidavit, in para 2(a) of the reply on merits, the audit objection regarding payment of Rs.1,15,707/- has been further explained in the following terms:-

"A sum of Rs.1,15,707/- has been objected to by the Audit Department on account of the notification No.3/169/98-1LG-IIII-1045 dated 28.1.1999, the octroi for washing machines was to be realized @ 1% instead of ½% with effect from 28.1.1999 amounting to Rs.43,464/-, therefore this amount of Rs.43,464/- is also to be adjusted in the refund because on washing machines 2% octroi was fixed by the competent authority after industrial rebate vide notification January , 1999 comes to 1% only. That Audit Officer vide another objection further pointed out that a sum of Rs.72,243/- as octroi was realized from the petitioner firm @1% instead of applicable rates of @2%. Therefore, this amount of Rs.72,243/- was not refundable, as the octroi was rightly charged. Consequently, total sum of Rs.1,15,707/- (Rs.43,464/-+Rs.72243/-=1,15,707/-) is to be deducted from the total amount of Rs.11,80,547/-, which was

claimed by the petitioner firm illegally".

From the above quoted stand taken by the respondent there can be no doubt that even according to him the petitioner was entitled for the refund of Rs.10,64,840/-, in addition to bank guarantee of Rs. 3 lacs furnished as security. It is, however, not denied by learned counsel for the respondent that security amount of Rs. 3 lacs has been refunded to the petitioner on 24th March, 2004 whereas the arrears of excess octroi amounting to Rs.10,64,840/- have been paid on 15th July, 2004 only, though the same were required to be refunded within a period of three months from the date of order, i.e., 9th May, 2003, passed by this Court.

As far as refund of the alleged excess payment of octroi amounting to Rs.1,15,707/- is concerned, there appears to be a serious dispute as to whether or not the petitioner is entitled for the said refund. In this view of the matter, and having regard to the fact that there is a substantial compliance of the directions issued by this Court, though at a belated stage, a lenient view deserves to be taken.

Consequently, this petition is disposed of with a direction to the Executive Officer, Municipal Council, Mohali, to pay interest to the petitioner @7% per annum on the delayed payments of refund of security amount of Rs.3 lacs as well as the refund of excess payment of octroi amounting to Rs.10,64,840/- which shall be calculated and paid for the period from 10th August, 2003 till the dates of actual payments, as noticed above. The arrears of interest shall be paid to the petitioner within two months from today.

So far as the refund of disputed amount of Rs.1,15,707/- is concerned, the petitioner shall be at liberty to make a supplementary

representation along with documents, if any, to the Executive Officer, Municipal Council, Mohali, within fifteen days from today and if any such representation is made, the competent authority in the Municipality shall consider the same as well as previous communications made by the petitioner in this regard and dispose of the same by passing a reasoned order within three months. If the petitioner's claim is turned down, the order shall contain reasons for such rejection and the petitioner will be at liberty to impugn the same in accordance with law and if so advised.

Disposed of.

Rule discharged.

August 08,2006. **(SURYA KANT)**
dinesh **JUDGE**